

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Cause No. 12 CR 2686 JB

YUREN ARANDA-DIAZ,

Defendant.

DEFENDANT'S SENTENCING MEMORANDUM

_____ COMES NOW Defendant, Yuren Aranda-Diaz (hereinafter Aranda) by and through his attorney of record, León Felipe Encinias, and submits his sentencing memorandum as follows:

Procedural History

Aranda was indicted on six counts , (1) Alien in Possession of a Firearm, (2) Felon in Possession of a firearm, (3) Possession with to Distribute Heroin, (4) Distribution of Heroin, (5) Possessing and Carrying a Firearm During and in Relation to a Drug Trafficking Crime and (6) Reentry of a Removed Alien. The Indictment was filed in this case on October 23, 2012.

On July 24, 2013, Aranda plead guilty to Count (1) Alien in Possession of Firearm, Count (2) Felon in Possession of a Firearm and Count (6) Reentry of a Removed Alien.

On July 25, 2013, Aranda was found guilty by jury trial of Count (3) Possession with intent to Distribute Heroin, Count (4) Distribution of Heroin and Count (5)

Possessing an Carrying a Firearm During and in Relation to a Drug Trafficking Crime.

The Presentence Investigative Report (hereinafter PSR) was disclosed on October 10, 2013.

Sentencing Calculations

PSR sentencing calculations are as follows:

Group 1 - Counts (1)-(4): Alien in Possession of a Firearm, Felon in Possession of a Firearm, Possession with Intent to Distribute Heroin and Distribution of Heroin:

Basic Offense Level	<u>18</u>
Adjustments	<u>0</u>
Adjusted Offense Level:	<u>18</u>

Group 2 - Count (6): Reentry of a Removed Alien:

Basic Level	<u>8</u>
Specific Offense Characteristics: Aggravated Felony	<u>8</u>
Adjusted Offense Level	<u>16</u>

Multiple Count Adjustment:

Group 1:

Adjusted Offense Level	18
Units	1.0

Group 2:

Adjusted Offense level	16
Units	1.0

Total Units	<u>2</u>
Greater of the Offense levels:	<u>18</u>
Combined Offense Level	<u>20</u>
Acceptance of Responsibility	<u>0</u>
Total Offense Level	<u>20</u>

Defendant's Criminal History

The following is Aranda' Criminal History point calculation:

Possession of Controlled Substance 1998	<u>3</u>
Resting /Evading /Obstructing Officer 2005	<u>2</u>
Reentry of Removed Alien 2006	<u>2</u>
_____Felon in Possession of Firearm 2008	<u>3</u>
Commission of offense while under crim. sent.	<u>2</u>
Total Criminal History points	<u>12</u>

_____Twelve criminal history points results in category V Criminal History Category placement, Category V and offense level 20 results in a guideline range of **63 to 78** months.

Count five which carries a minimum of 5 years and maximum of life and must be imposed consecutive to any other count.

Historical Considerations

Aranda is a 39 year old male born in Mexico and living in the United States since age two. He speaks Both Spanish and English but does not read or write in either

English or Spanish. He was a Lawful Permanent Resident until his LPR status was revoked after the controlled substance conviction in 1999 and he was deported in 2000.

Aranda's parents and siblings all reside lawfully in the United States. Aranda's father is Armando Aranda and his mother is Maria Diaz. Both are 75 years old and both reside in Albuquerque, New Mexico. His father suffered from a heart attack in 2007 but his parents are otherwise in good health. All of Aranda's siblings reside in Albuquerque except for one brother who resides in Denver, Colorado. All are employed and all are in good health.

Aranda has been married to Stephanie Soza for 16 years and the couple has three children, Josephine Aranda, age 20, Natalie Aranda, age 17 and Angel Aranda, age 11. His children reside with their mother and are reported to be in good health.

Aranda has been diagnosed with adenoiditis, arm pain, skin infection, lesions underneath tongue (Squamous cell carcinoma-form of skin cancer), hepatitis C virus, opioid withdrawal and tendinitis.

Aranda has a history of illegal drug use dating back to when he was twelve years old. He reports having attended a substance abuse program at Turquoise Lodge from 2002 to 2003. He also reports having been shot and stabbed on two occasions resulting in hospitalization. He was also hospitalized for a collapsed lung due to drug use.

Aranda has a serious drug use problem having been addicted most of his life. He is interested in substance abuse counseling in the Bureau of Prisons.

Aranda attended Albuquerque Public School until the ninth grade when he dropped out. Aranda was in special education due to a learning disability for all of the time he was in school. He has no post high school education or training.

Aranda worked for a construction company for a little over one years and was self employed doing construction work off and on for nine years. His employment history shows a person with sporadic employment and no specialized training.

Aranda returned to the United States after having been deported. It is no mystery as to why he returned. All of his immediate family members live in the United States. He came to the United States at two years of age. He attended school from the first grade to the ninth grade. He has a wife and three children who are United States Citizens. He resided continuously in the United States twenty five years before being deported. He lived outside f the United States in Mexico for less than two years. All of his family and cultural ties are in the United States.

Aranda realizes that he sold have done things different in is life. He choices have resulted in his incarceration, the loss of his family while incarcerated and after being deported. The only way that Aranda can reunite with his family after completing his sentence in this case is for his family to relocate to Mexico. Given the economic situation and the danger posed by the drug cartels in Mexico it is unlikely that his family would even consider moving to Mexico.

Most of Aranda's problems stem from his drug use. As noted above he has been addicted almost all of his life. He sought treatment at Turquoise Lodge in Albuquerque and was on Methadone while attempting to overcome his addiction but obviously he was not successful. We don't and can never know if more or different treatment could have changed Aranda's history but I think we can all agree that there is a woeful lack of resources for a person in Aranda's position. Additionally, Aranda is illiterate and has very little education.

We can't say that any one of his problems necessarily leads to any other problem but we can say the lack of resources did not help his situation. It can be and probably will be argued that others in similar situations have been able to lead more productive and lawful lives. However, none of us can say with certainty that if we were in Aranda's shoes our outcome would have been different.

The Court in determining the particular sentence to impose shall consider the nature and circumstances of the offense and the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). The history and circumstances of this case do not warrant the severe sentence contemplated in Guideline calculations. A downward variance is warranted based on the history and characteristics of this defendant.

Objections

The following are Aranda's objections to the PSR:

On Page 10, Paragraph 37 of the PSR, Aranda is given no reduction for acceptance of responsibility. While it is correct that Aranda went to trial on counts 3, 4 and 5, he did, as noted, plead guilty to three other counts.

Aranda clearly demonstrated acceptance of responsibility as to counts 1, 2 and 6. He admitted the conduct comprising the offenses. He did not falsely deny any additional Relevant Conduct.

Addition Considerations

Aranda did not participate in sentencing preparation as he believes that counsel is not acting in his best interest.¹

¹. Aranda indicated that he would file a motion to withdraw counsel which should explain his concerns.

Conclusion

Aranda asks that the Court grant his objection as noted above and vary downward based on the argument herein.

Respectfully submitted,

/S/

León Felipe Encinias
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THIS IS TO CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING PLEADING WAS SERVED UPON THE OFFICE OF THE UNITED STATES ATTORNEY by ELECTRONIC FILING ON THIS 10th DAY OF February, 2014.

/S/

León Felipe Encinias, Esq.